

REMARKS

Claims 1-13 and 16-23 are all the claims pending in the application. Claims 1-8 and 16 have been amended to more clearly point out the claimed invention. Claims 17-23 have been newly added. Support for the amendments may be found by, for example original claims 2-13. No new matter has been introduced and entry of the amendment is respectfully requested.

Specification Objection

The specification stands objected to and the Office Action requests to update (include) priority claim information in the specification. Applicants believe that such inclusion is not necessary. Nevertheless, in order to expedite the prosecution of the application, the specification has been amended to include the priority information as required by the Examiner.

Claim Rejection under 35 U.S.C. § 102(b)

Claims 2-13 and 16 stand rejected under 35 U.S.C. §102(b) as being anticipated by Brantman (U.S. Patent No. 4,687,782, issued August 18, 1987).

Brantman is relied upon to teach diet supplements comprising an amino acid mixture. The amino acid mixture taught by Brantman consists essentially of carnitine, leucine, isoleucine, valine, glutamine, valine, and water. That is, the composition taught by Brantman contains carnitine as an essential ingredient.

By contrast, currently presented claims 2 and 8 of the present application each recite that the claimed composition/food or drink “consist essentially of” leucine, isoleucine, valine, glutamine and a whey protein component. Currently presented claim 16 also recite to administer

a composition consisting of leucine, isoleucine, valine, glutamine and a whey protein component to a subject in need of sustained improvement of muscular fatigue.

Newly added claims 17-23 recite to administer a composition consisting essentially of leucine, isoleucine, valine, glutamine and a whey protein component to a subject in need of sustained improvement of muscular fatigue.

Accordingly, the compositions taught by Brantman do not anticipate the compositions, food/drinks or method of the currently presented claims of the instant application. Therefore, withdrawal of the rejection is respectfully requested.

Claim Rejection Under 35 U.S.C. § 103

Claim 1 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Brantman. Applicants respectfully traverse the rejection.

As discussed above, the composition taught by Brantman consists essentially of carnitine, leucine, isoleucine, valine, glutamine, valine, and water. That is, the composition taught by Brantman contains carnitine as an essential ingredient.

By contrary, the currently claimed composition of the present application does not require carnitine.

An omission of an element and retention of its function is an indicia of unobviousness. *In re Edge*, 359 F.2d 896, 149 USPQ 556 (CCPA 1966); MPEP 2144.04.

The currently claimed composition exhibits an improved sustained suppression of muscle proteolysis after a physical exercise, indicating a sustained improvement in muscle fatigue after a physical exercise. *See, e.g.*, Test Example 1 in pages 9-11 of the specification.

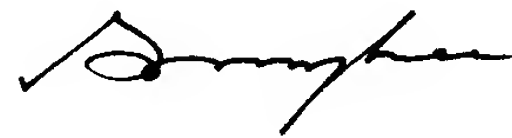
Amendment under 37 C.F.R. § 1.111
USSN 10/537,401

Accordingly, it is believed that the rejection is moot and applicants respectfully request the rejection be withdrawn in view of the accompanying amendments.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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